



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

Room 110 Capitol Building \* P.O. Box 201711 \* Helena, MT 59620-1711 \* (406) 444-2986 \* FAX (406) 444-3036

Legislative Fiscal Analyst  
CLAYTON SCHENCK

DATE: May 23, 2006

TO: Legislative Finance Committee

FROM: Lois Steinbeck  
Marilyn Daumiller  
Kris Wilkinson

RE: Deficit Reduction Act of 2005 – Update

## SUMMARY

The Legislative Finance Committee (LFC) heard a staff report about the Deficit Reduction Act of 2005 (DRA) at its last meeting. The report highlighted changes made by the act that might increase costs for the programs administered by the Department of Public Health and Human Services (DPHHS) and those that might decrease costs. Much of the information given to the LFC in March has not changed. This memo summarizes new information related to the DRA.

## LEGAL STATUS

At least two legal actions have been filed challenging the constitutionality of the act since the U.S. House passed a version of the act that is different than the version passed by the U.S. Senate.<sup>1</sup> The President signed the senate version. There has been no court determination. At this time, federal agencies are moving forward to implement the act.

## OTHER DRA ISSUES

DPHHS has undertaken, explored, or will undertake several activities related to the DRA. Each is summarized and explained below.

### Medicaid Drug Reimbursement

DPHHS has made a preliminary estimate of savings related to changing Medicaid drug reimbursement from the average wholesale price to the average manufacturer's price as part of its appropriation transfer request. DPHHS estimated a 2 percent savings, which would equate to a \$0.3 million savings in the first full year of implementation.

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<sup>1</sup> Jim Zeigler's lawsuit is Civil Action: 2006-80 and was filed in the U.S. District Court for the Southern District of Alabama on February 13, 2006. The Public Citizen case is: Case No. 06-00523, filed in the U.S. District Court for the District of Columbia on March 21, 2006.

The change in drug reimbursement was one of the suggestions made by the National Governor's Association as well as the Medicaid advisory commission to the Centers for Medicare and Medicaid Services (CMS). Those organizations predicted much higher rates of savings – potentially 10 to 15 percent of drug costs.

If drug reimbursement costs decline more than estimated by DPHHS, the agency has stated that it will most likely raise the pharmacy-dispensing fee to ensure that local pharmacies will still participate in Medicaid. The current dispensing fee is \$4.70 per service.

State savings could be greater than currently estimated by DPHHS. For instance, if drug cost reductions were 10 percent and DPHHS increased pharmacy dispensing fees by \$1, there would be a net savings of about \$970,000 general fund in the first full year of implementation assuming FY 2005 trends in the number of scripts and the increase in pharmacy costs continues.

### **Demonstration Grants for Children's Mental Health Services**

The DRA established 10 demonstration grants to serve children in the community who might otherwise be served in an inpatient residential treatment center. The grants run for five years. Grants are supposed to be effective January 2007, and with a request for solicitation issued by the end of June. That time schedule appears to be extremely challenging.

DPHHS will apply for one of the grants. The grants will have some of the same characteristics as a waiver in that they must be cost neutral and will be awarded under some of the same guidelines as a Medicaid waiver. DPHHS is finalizing its definition of a target population and the number of service slots that will be included in its request.<sup>2</sup>

During the last session, DPHHS had indicated that it potentially would apply for two Medicaid waivers for children with a serious emotional disturbance (SED):

- 1) A waiver of deeming that allows states to disregard parental income and resources in determining a child's eligibility for Medicaid services, similar to the current waivers to serve children with a developmental or physical disability; and
- 2) A home and community based services (HCBS) type waiver that would allow the state to provide unique types of services to SED children in their homes and community.

DPHHS has opted to not pursue either waiver. The waiver of deeming is projected to cost too much. The level of service and cost neutrality conditions of the HCBS waiver were too narrow to be as useful as DPHHS originally hoped.<sup>3</sup> If DPHHS is successful in obtaining one of the grants authorized by the DRA, it will be able to provide some of the same unique services it originally planned but without having to obtain a waiver.

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<sup>2</sup> Pete Surdock, Bureau Chief, Children's Mental Health Bureau, Health Resources Division, DPHHS, personal conversation with Lois Steinbeck, May 24, 2006.

<sup>3</sup> The federal Centers for Medicare and Medicaid Services (CMS) would only consider HCBS services for children who required the level of care provided in an inpatient psychiatric hospital for placement in the waiver. DPHHS had hoped to establish the level of care requirement nearer to that of a residential treatment facility, such as Shodair Residential Treatment, Yellowstone Boys and Girls Ranch and Kids Behavioral Health in Montana.

## **New Medicaid State Plan Service**

The DRA allows states to offer some of the services formerly available only through an HCBS waiver as a new state plan service. DPHHS researched this new service as an option to pursuing the HCBS waiver for adults with a serious and disabling mental illness (SDMI). However, the types of services available under the state plan option were not the types of community services that DPHHS believes are needed to serve adults with an SDMI successfully in the community. Had the option been a good fit, potentially DPHHS could have implemented its community services quicker and helped alleviate high patient levels at the Montana State Hospital.

## **FUTURE UPDATES**

LFD staff will continue to monitor implementation of the DRA and provide updates to the LFC. DPHHS staff is hopeful that the draft regulations implementing changes to targeted case management will be published prior to the June LFC meeting, which would provide guidance on whether the potential \$3 million general fund cost included in the DPHHS budget status report for FY 2006 will occur.

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